(c) alternative to (b), in failing to apply the general principle that a person who is resident outside the jurisdiction should not be appointed as trustee, unless there are special circumstances (and there are none in this case);

(d) in rejecting BMT and the second plaintiff as qualifying candidates by reason of (a) above and also on the wholly unjustifiable reasons given by them.

In view of these errors, I am of the view that HBT have failed to exercise their power of appointment properly and that two of their nominees, viz the second and the fifth defendants, are not proper persons to be appointed as trustees. Accordingly, I decline to appoint HBT's nominees as a group. In the event, although I have expressed some degree of scepticism and criticism of the conduct of HBT and their nominees, I have found it unnecessary to express any concluded judgment on matters not specifically mentioned in the above findings, eg the fitness of HBT's nominees in terms of their character and integrity.

In the event that has occurred, the court should, following *Re Gadd*,[3] refer the matter back to HBT to make fresh nominations. However, there is no necessity to do so, as HBT have, both in this application and in their counsel's answer to a question from the court, decided to invite the court to make its own nomination in the event that has occurred. I accept the invitation which I consider a wholly desirable course to adopt in the circumstances of this case. As there is no real dispute about BMT's professionalism and fitness to act as trustees, I have decided to appoint BMT as the sole trustee of the family settlement in place of HBT on terms of remuneration set out in their letter of 3 April 1987. HBT are given leave to retire as trustees from today. There will be an order in these terms. I will now deal with the necessary consequential orders and directions and hear arguments on the costs of this application.

Order in terms.

Solicitors: *Abraham Low & Partners*; *Lee & Lee*; *Tan, Rajah & Cheah*; *Oehlers & Choa.*

Reported by *Terence Tan Bian Chye*

Tay Cheow Seng v Lee Puey Hwa

HIGH COURT (SINGAPORE) – DIVORCE NO 26 OF 1985
LAI KEW CHAI J
28 MARCH 1989

Family Law – Divorce – Maintenance of wife – Factors to be considered – Present and future financial obligations of husband – Needs of husband's new family – Likelihood of wife remarrying – Women's Charter (Cap 353, 1985 Ed), ss 108(1)(a)-(g) & 109(1) – Matrimonial Proceedings Rules 1981, r 40(1)

The petitioner had filed for the dissolution of the marriage. The petitioner and the respondent had a child who was self-supporting. The respondent filed an answer asserting that the marriage had broken down because of the petitioner's adultery with the party-cited, who had borne him two sons. The Chief Justice ordered the petitioner to pay the respondent maintenance at $1,000 pm pending the hearing of the divorce petition. Later, the present judge increased the amount to $1,400 pm pending the conclusion of the hearing of the application for maintenance. The respondent sought final maintenance under the Women's Charter either at a monthly rate or for a lump sum equal to ⅓ of the capital worth of the petitioner. The petitioner filed an affidavit listing his expenses and his assets which included shares in private companies.

Held, awarding maintenance of $1,800 a month to the respondent:

(1) All the circumstances of the case should be taken into account. So far as the respondent is concerned, the principal matter is her financial needs, seeing that she had never worked and will not be able to work.

(2) As for the petitioner, his income and earning capacity and his obligations to his other family should be looked at. The fact that the petitioner has remarried with two sons has to be considered in terms of his financial obligations and responsibilities which he has or is likely to have in the foreseeable future.

(3) As each case had its own peculiar characteristics, references to case law serve only as a guide. For a start, ⅓ of the joint income of both parties should be ordered as maintenance for a former working wife. Different considerations must apply where she does not work and will not be able to, as in this case.

(4) The respondent was a very frugal person, and her evidence that she was not adequately maintained during the period before divorce (being given $800 a month) and that she had to seek financial assistance from others was accepted.

(5) Considering all the circumstances, the petitioner should pay the respondent maintenance of $1,800 pm.

(6) As regards the respondent's application for a lump sum, none should be paid. This was because the petitioner's wealth was largely inherited and his own acquisitions were achieved in the course of his professional practice, with considerable help from the party-cited, during a period when his marriage to the respondent was over to all intents and purposes. In addition, the shares in the private companies were not easily realizable.

(7) However, to secure the maintenance to the respondent who, being a traditional Chinese lady, was unlikely to remarry, the petitioner was ordered to hold the income of his shares in the private companies as trustee upon trust to pay the maintenance, and subject thereto, he was free to deal with the residue. Costs were to be paid by the petitioner to the respondent.

[*Editorial Note*: The respondent has appealed to the Court of Appeal vide Civil Appeal No 31 of 1989.]

Cases referred to
1 *Wachtel* v *Wachtel* [1973] 2 WLR 366 (distd)
2 *Fraser* v *Fraser* [1982] 3 FLR 98 (folld)

Legislation referred to
Women's Charter (Cap 353, 1985 Ed) ss 108(1)(a)-(g), 109(1)
Matrimonial Proceedings Rules 1981 r 40(1)

KS Chung for the applicant/respondent.
Ng Wing Cheong for the petitioner.
Richard Laycock for the party-cited.

Cur Adv Vult

Lai Kew Chai J: On 23 December 1985 the marriage between the parties was dissolved. I have before me an adjourned application by the respondent for maintenance under s 107(b) of the Women's Charter (Cap 353) at the rate of $3,000 pm or for a lump sum under s 109(1) of the Women's Charter. As for the claim for payment of the maintenance by a lump sum, the respondent is asking for ⅓ of the 'capital worth' of the petitioner which she claimed is about $2.281m. In other words she is asking that the petitioner be ordered to pay her $760,347 lump sum. On 16 August 1985 the learned Chief Justice ordered the petitioner to pay the respondent maintenance at $1,000 pm before the hearing of the divorce petition. On 6 November 1987, after considering the affidavit filed by the respondent on 18 July 1985, I made an interim order increasing the maintenance to $1,400 pm wef 1 November 1985 pending the conclusion of the hearing of the application for maintenance.

The basic facts may be summarized briefly as follows. The parties were married on 7 September 1956 at the Registry of Marriages, Singapore, after which they left for London, United Kingdom, where the petitioner read law and eventually qualified as a barrister-at-law. She looked after him. I need not hark back to his allegations that she was incompatible or domineering, as to which I do not find necessary to comment. Their only child, a daughter, was born on 22 October 1957. She is now 31 and does not feature in this case except that she has been living with her mother at No 14 Clover Way, Singapore, is gainfully employed and has been contributing to the household expenses. Upon his return to Singapore, he worked in the legal service and later started his own practice under the style of CS Tay & Company. In or about 1961 the respondent found out that he was having an affair with the party-cited whom he has since married. He has two children by that union. The respondent has been reluctantly accepting the situation and continued to stay in the family house in Killiney Road. In 1965 the petitioner left the matrimonial home. For 23 years they lived separate lives. However, he has been maintaining her and the daughter and the question of maintenance or its sufficiency or division of matrimonial assets never arose until the divorce petition was filed. The family house in Killiney Road was sold and the petitioner purchased No 14 Clover Way, Singapore, for the respondent and their daughter to live in. The property was vested in the names of the respondent and, for some unknown reason, that of the party-cited as tenants-in-common. When giving evidence before me, the petitioner admitted that the party-cited held that property, which was valued at $370,000 last year, upon trust and for the benefit of the daughter. By my order made on 6 November 1987 I ordered the petitioner to cause the party-cited to convey her title and interest in the property to the respondent and the daughter as tenants-in-common in equal shares. Both parties are aged 56. In her first affidavit dated 17 July 1985 she said her monthly expenditure was about $1,110. An examination of the items set out in para 20 of her affidavit would show that she had made no provision for medical expenses, maintenance and outgoings for the house. As was later shown by the photographs exhibited, the house at No 14 Clover Way, Singapore, was in great need of maintenance and repair. It stood in great contrast to the house at No 11 Binjai Walk, Singapore, which is the matrimonial home of the petitioner and the party-cited.

I now turn to the course of and the reliefs claimed in these divorce proceedings after which I shall deal with the principal areas of facts in controversy. In January 1985 the petitioner filed for dissolution of the marriage on the ground of irretrievable breakdown by reason of their having lived apart since sometime in September 1965. In February 1985 the respondent filed an answer and though admitting the fact of living apart, she asserted that the marriage had broken down irretrievably because the petitioner had committed adultery with the party-cited who bore him two sons born in 1972 and 1975. In her answer, she prayed that she might be granted maintenance pending suit and thereafter such periodical payments, secured provision or lump sum for herself as the court may deem just. She also prayed that the petitioner be ordered to transfer to her such part of his interest in the property known as No 11 Binjai Walk, Singapore, where the petitioner's new family has been living. By the time the matter was heard before me, and in view of the fact that this property was acquired by the joint efforts of the petitioner and the party-cited and probably in view of the fact that I had regularized the title to the respondent's own home at No 14 Clover Way, Singapore, the respondent abandoned any claim to No 11 Binjai Walk, Singapore. In his reply and answer to the cross-petition he admitted the adultery and claimed that No 11 Binjai Walk was the home of his new family to which the respondent had no claims whatsoever. He claimed that he had provided her and their daughter with a home at No 14 Clover Way. For some reason best known to the petitioner he caused this house to be vested in the name of the party-cited as a co-owner. In March

1985 the respondent filed her reply to the petitioner's answer. On the issue of maintenance she averred, which she later affirmed in her first affidavit, that she never was and was not then satisfied or well contented, as alleged, with the maintenance provided by the petitioner in the 27 years which had elapsed. She said the petitioner gave her only $600 pm as pocket allowance when they were residing at No 147 Killiney Road, Singapore, with his family who provided the meals and other expenses. The petitioner continued to pay her $600 pm maintenance when she and their daughter moved to No 14 Clover Way, Singapore, in 1971. After living there for two years, the petitioner increased the maintenance to $800 pm which he continued paying at the same rate for some 13 years until August 1985 when he was ordered to pay $1,000 pm pending suit. He did allow their daughter to use a car which, again for reasons best known to the petitioner, was registered in the name of the party-cited. The respondent averred that she had repeatedly asked him to increase the maintenance but he had repeatedly refused. Although he paid for the outgoings for No 14 Clover Way he had failed to maintain it. It was left in a state of disrepair.

On 26 April 1985 the respondent applied by summons-in-chambers that the petitioner file an affidavit as to his means in accordance with r 40(1) of the Matrimonial Proceedings Rules 1981, that he disclose all relevant documents, that he be ordered to pay adequate maintenance pending suit and that he transfer to her his share or interest in No 11 Binjai Walk. On 4 July 1985 the petitioner filed his first affidavit. He affirmed that since living apart from the respondent he had been providing her $800 pm and that he had been responsible for all the outgoings and 'the general maintenance' of the house. The photographs subsequently produced did not show that the house was maintained at a reasonable level. He produced his income tax assessment for the year ended 1984 which disclosed that his total income was $74,227.69 after tax. He did not make any reference to any contribution from the party-cited who had, inter alia, rented her office premises to his law firm. He listed his expenses for 1985 as follows:

Maintenance for the two sons	$ 600
Salary for maid	$ 300
Foreign worker levy	$ 120
Food for maid	$ 50
Washer woman	$ 150
Part-time gardener	$ 170
Maintenance of garden & pool	$ 150
Maintenance of two cars	$ 300
Monthly hire purchase of car	$ 983.40
Food & provisions	$ 600
PUB, Telecoms, property tax & insurance of 11 Binjai Walk	$ 550
Maintenance for respondent	$ 800
PUB, Telecoms, property tax & insurance of 14 Clover Way	$ 200
Personal expenses	$1400
Total	$6373.40

In her first affidavit filed on 17 July 1985 she described very briefly her background, the early and difficult days of her marriage, her initial stay in the family home, the adulterous affair of the petitioner and the less than adequate financial provision for her and her daughter by the petitioner. The respondent has had very little education, having been brought up by a well-known, very successful but traditional Chinese who devised and bequeathed much more to his male line than his female descendants. In addition to her co-ownership of No 14 Clover Way, Singapore, she held shares in certain companies and deposits in two pawn shops which, she said, have been giving her an income of about $3,000 pa. She also had a joint bank account with the daughter. The account had about $10,000. In support of her application for $1,400 pm as maintenance pending suit, she affirmed that her expenses were $1,110 which was at a level well below the standard to which she had been accustomed before the breakdown of the marriage. In those days when she only received $800 pm, she used to manage with her meagre income from her said sources and with the occasional contributions from her daughter or, when the situation became desperate, from her brothers. In fact, she had to enlist the financial assistance of her brothers to pay a dental bill for $800. This situation should not continue.

At the hearing of the summons-in-chambers it was ordered that the petitioner pay the respondent $1,000 pm pending suit, which , as I said, I increased to $1,400 pm with effect from 1 November 1987 when the question of the maintenance was part-heard on 6 November 1987. Much time and affidavit evidence were taken on the question of the assets of the petitioner. The respondent had to persevere to get at the information. In the end, his assets were substantially as those declared in his affidavit of July 1985. They are as follows:

	Value
A Immovable property	
11 Binjai Walk, ½ of which is beneficially owned by the party-cited.	$ 550,000
¼ share in 9 Jalan Berjaya is held by the petitioner in trust for his sister.	Nil
B Shares in public-listed companies	
(a) 11,440 shares in OCBC, value as at 7 April 1988	$ 77,220
(b) 4,606 shares in UOB, value as at 7 April 1988	$ 22,385.16
(c) 3,851 shares in HSBC	$ 7,158.62

C Shares in private companies		
(a) 411 shares in Tay Miang Huat Pte Ltd	$	55,000
(b) 455 shares in Tay Miang Huat Distillery Pte Ltd	$	105,000
(c) 249 shares in Tay Miang Guan & Co Sdn Bhd	$	58,305
(d) 499 shares in Tong Ah Sdn Bhd	$	326,508
D Cash in Hand		
(a) Office account of his firm	$	24,057
(b) Savings account in POSB	$	7,963.14
(c) Deposit account with Tong Ah Co Sdn Bhd	$	4,937.79
E Two cars	$	50,000
F Furniture, books & office equipment	$	20,000
Total		$1,308,534.71

It was not disputed that the petitioner's shares in the private companies were all gifts made to him by his late father before the marriage nor did the respondent contribute to the acquisition of any of the other assets. The respondent looked after the daughter ever since the petitioner left her for the party-cited in September 1965. But in support of her application for payment of the maintenance by a lump sum, the respondent contended that the shares in the private companies were worth about M$2.5m. In the circumstances, I do not think it is necessary nor could I, in any case, decide which valuation of the shares is correct without hearing oral evidence from the experts, an exercise which I think is wholly unnecessary in view of what I am going to decide.

Turning to the income of the petitioner, it is not disputed that his net income for the years 1981 to 1987 were as follows:

1981	$ 97,714.29
1982	$ 99,320.00
1983	$ 71,384.61
1984	$131,473.28
1985	$ 73,847.30
1986	$ 48,025.58
1987	$ 54,628.25

Paragraphs 17, 18 and 19 of his affidavit of 21 April 1988 stated as follows:

> 17 I live at No 11, Binjai Walk, Singapore, with my wife (the party-cited) and the two children and my monthly expenditure is $8,218.54 made up as follows:
>
> | Expenditure | |
> |---|---|
> | Maintenance and education of two children | $1,200 |
> | Salary for maid | 300 |
> | Foreign worker's levy | 120 |
> | Washerwoman | 150 |
> | Gardener | 200 |
> | Maintenance of garden | 150 |
> | Hire purchase of motor car SBE5712X | 463.54 |
> | PUB, Telecoms, property tax, insurance and maintenance of No 11 Binjai Walk | 600 |
> | Food and provisions | 1,200 |
> | Maintenance for respondent | 1,400 |
> | Personal expenses | 2,000 |
> | Birthdays, wedding presents, wreaths etc | 300 |
> | Insurance premiums for life & accident | 135 |
> | | $8,218.54 |
>
> 18 Due to the current recession, I am finding it difficult to make ends meet as my income is derived largely from my profession and my monthly expenses have gone up in view of the interim maintenance to the respondent having been increased by this Honourable Court.
>
> 19 Further I have a new family to support and I have to provide a tertiary education for my two children in the very near future as education fees abroad are expensive and I have to save for them to meet their future requirements.

Despite rigorous cross-examination of the petitioner by counsel for the respondent, the depositions in the three paragraphs remained substantially intact, save that (a) the expenses were excessive or exaggerated, as I shall explain; and (b) the respondent could not give me any satisfactory explanation as to how he managed to pay for the shortfalls. I could not accept his evidence that he had taken loans from his friends. It is inescapable that he had some sources of funds as there is no evidence that he is in debt at all.

I now come to the difficult question of deciding the amount of maintenance which the petitioner should pay. I have to take into account 'all the circumstances of the case' as provided in s 108(1) of the Women's Charter and the matters particularized in paras (a) to (g), nearly all of which have a bearing on this case and in applying them it seems to me that they have varying degrees of impact in this case. So far as the respondent is concerned, the principal matter is her 'financial needs', seeing that she had never worked and will not be able to work. As for the petitioner, I have to look at his income and earning capacity and his obligations to members of his new family. The other considerations set out in s 108(1)(a) to (g), save for paras (e) and (g) which clearly do not apply, have lesser or much lesser effect. As each case has its peculiar circumstances, references to case law serve only as a guide. *Wachtel* v *Wachtel*,[1] for example, tells us for a start to order ⅓ of the joint incomes of both parties as maintenance for a working former wife. Different considerations must apply where she does not work and will not be able to work, as in this case. That the petitioner has remarried with two sons is also required by s 108(1)(b) to be considered in terms of his financial obligations and responsibilities which he has or is likely to have in the foreseeable future. Taking a broad view, I am of the opinion that the petitioner can trim down his expenses such as $3,600 pa for presents and wreaths, keeping two

cars, $24,000 pa for personal expenses, hire purchase for a car and rather high maintenance for his two sons. On the other hand, the respondent had, in my view, understated her expenses. She is obviously a very frugal person and not given to making exaggerated claims. I accept her evidence that she has not been adequately maintained during all the years she was paid only $800 pm and that she had to seek financial assistance from her daughter and her brothers. The petitioner must discharge his obligations. I have given this matter very anxious thought and considering 'all the circumstances of the case' I order the petitioner to pay the respondent $1,800 pm maintenance with effect from 1 June 1988. As from 1 June 1988 the petitioner, however, would not be liable for the outgoings of No 14 Clover Way and my earlier order that he pay for the outgoings is varied accordingly.

I now deal with the respondent's application for a lump sum under s 109(1) of the Women's Charter, which reads: 'A maintenance order may provide for the payment of a lump sum or such periodical payment as the court may determine'. I agree with counsel for the petitioner that *Wachtel* v *Wachtel*[1] is not applicable, as the question of a lump sum in that case was considered in relation to the matrimonial home. In the present case, as I had noted, the respondent has a half share in No 14 Clover Way which was valued at $370,000; the other half share being vested in her daughter. I accept that *Fraser* v *Fraser*[2] is relevant. The petitioner's wealth was largely inherited and his own acquisitions were achieved in the course of his professional practice, with considerable help from the party-cited, during a period when his marriage to the respondent was over to all intents and purposes. Further, his inheritance in the form of the shares in the private companies are all not easily realizable. Accordingly, I am not prepared to exercise my discretion under s 109(1) but I am anxious to secure the payment of maintenance to the respondent who, being a traditional Chinese lady, is in my opinion unlikely to remarry. I therefore order under the powers conferred on me by s 109(2) that the petitioner shall hold the income of all his shares in the private companies mentioned in this judgment as a trustee upon trust to pay the maintenance or any part thereof and, subject thereto, he may beneficially deal with the residue, if any, of his income from the said shares. On the question of costs, I have in mind the entire proceedings herein for ancillary reliefs. I order the petitioner to pay costs to the respondent.

Order accordingly.

Solicitors: *Chung & Co*; *Ng & Ng*; *Richard Laycock*.

Reported by *Terence Tan Bian Chye*

MALAYSIAN REPORTS

Re Heng Peng Hoo & Anor

HIGH COURT (PENANG) – DIVORCE PETITION NO 47-38-1983
MOHAMED DZAIDDIN J
29 MAY 1989

Family Law – Divorce – Joint petition – Application for share of matrimonial home – Property acquired by sole effort of husband – Contributions made by wife – Law Reform (Marriage and Divorce) Act 1976, s 76(1) & (4)

In this case the marriage between the parties had been dissolved on a joint petition for divorce. The applicant applied for an order for the division of the property and claimed a half-share of the matrimonial home registered in the name of the respondent-husband.

Held, dismissing the application but making an order for a lump sum payment:

(1) After considering the entire evidence the court was satisfied that the property was not jointly acquired but was acquired by the sole effort of the respondent. The application under s 76(1) of the Law Reform (Marriage and Divorce) Act 1976 therefore failed.

(2) The applicant had made contributions by rendering domestic services to the husband and towards the welfare of the family and by looking after the four children and bringing them up.

(3) In the circumstances of this case, it is appropriate, instead of ordering a division of the property, to make an order for a lump sum payment to be made by the respondent to the applicant. Bearing in mind the extent of the contributions by the applicant to the welfare of the family, by caring for the children and looking after the family, a sum of $10,000 would be a fair assessment of her contributions.

Cases referred to

1 *Gissing* v *Gissing* [1970] 2 All ER 780 (not follld)
2 *Wachtel* v *Wachtel* [1973] 1 All ER 829 (not follld)
3 *Kowalczuk* v *Kowalczuk* [1973] 2 All ER 1042 (not follld)

Legislation referred to

Law Reform (Marriage and Divorce) Act 1976 s 76

Neoh Lay Choo for the applicant.
Tan Boon Hee for the respondent.

Cur Adv Vult

Mohamed Dzaiddin J: This is an application by Madam Goh Ah Moy ('the applicant') on a joint petition for divorce (the marriage having been dissolved by this court on 11 August 1983) for ancillary relief under r 56 of the Divorce and Matrimonial Proceedings Rules 1980. She is asking this court to make an order for division of a piece of property known as lot 2862 Mukim 15, Jalan Kulim, Seberang Perai Tengah, bearing title HS(M) No 627 together with a dwelling house known as No 64 Lorong Sepakat Tiga, Taman Bandaraya, Bukit Mertajam ('the said property'), under s 76 of the Law Reform (Marriage